IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 67 of 1992

NEW INDIA INSURANCE COMPANY
V/S
SMT.SANTOSH KANWAR

Mr. BR MEHTA for Mr. JASWANT MAL, for the appellant / petitioner

Mr. NS KHILERI for Mr. SP SHARMA, for the respondent

Date of Order : 2.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed against the award of Workmen's Compensation Commissioner, Udaipur, awarding a sum of Rs. 87,980/-, along with penalty and interest by way of compensation.

The facts of the case are, that the deceased Bhanwar Singh was appointed as driver on Taxi No. RST 6432 by the employer Arjun Lal at the monthly salary of Rs. 1000/-, apart from the daily allowance of Rs. 10/-. It was alleged, that on the fateful day being 12.11.1987, at about 2.30 P.M. three persons came to hire the taxi, and did hire it for consideration of Rs. 125/-. However, the hirers later offered to carry it to Ambaji and Banswara on 13.11.1987, and for which also fare was agreed, and this fact was informed to the employer, who consented to it.

Then, he went to Ambaji, and therefrom he went to Banswara. At that time near village Gulabpura and Tamtiya, in the District Dungarpur, the three hirers strangulated him, and killed, and carried away the taxi car. With these averments it was alleged, that deceased died in accident arising out of and during the course of employment, and therefore, compensation of Rs. 1,40,000/- along with penalty and interest was claimed. The owner contested the claim on the ground, that the vehicle is insured, and the liability is of the insurer. However, the insurer contended that notice of accident was not given to it, nor the fact about the deceased being employed, or about his salary and allowance, was brought to its notice.

The learned trial court, deciding issue no. 1 found, that the deceased was killed near the culvert, between villages Gulabpura and Tamtiya, and thus it was found, that the deceased died in an accident arising out of and during the course of employment. Then, deciding issue no. 2 it was found, that deceased was 23 years of age, and was earning Rs. 1,000/- per month. Then, deciding issue no. 3 regarding liability of the insurer, it was found, negativing the contention about it being a case of murder resulting into non-liability of insurer, that even in such cases it does amount to an accident arising out of and during the course of employment, and therefore, the insurer was held liable, and the award as above was passed.

Arguing the appeal it was contended, that the insurer is not liable for interest, and penalty, as held liable by the learned trial court. The other contention raised is, that liability of interest could not exceed 6% p.a. Then, quantum of compensation is also challenged on the ground, that victim has wrongly been found to be of 23 years of age, while as a matter of fact he was of 25 years of age.

I have considered the submissions, and find, that in view of the series of recent judgments of Hon'ble the Supreme Court, the insurer has rightly been held liable for interest and penalty. So far quantum of interest is concerned, that also is well supported by law. Then, so far as the contention about age of the deceased is concerned, it is a pure finding of fact, while appeal under Section 30 lies only on the substantial question of law.

Thus, taken from any stand point, I do not find any error in the impugned award, requiring interference. The appeal is, therefore, dismissed. Parties are left to bear their own costs.

(N P GUPTA),J.

/Sushil/